

## Under New Pa. Rules, Third-Party Claims Against Design Professionals Don't Require Certificate of Merit

Since January 2003, the Pennsylvania Rules of Civil Procedure have required that a professional negligence claim against a licensed professional be supported by a "certificate of merit" containing an affirmative representation that the claim is supported by a licensed professional's written statement that the allegedly negligent professional's conduct fell outside acceptable professional standards and that the conduct was a cause of the plaintiff's harm.

But it has not always been clear what types of claims must be supported by a certificate of merit. Consider, for example, this scenario: a contractor relies on the plans, drawings and specifications provided by the project architect in preparing its bid for the project. Later, it is determined that the plans contained false and incorrect information, causing the contractor to incur additional costs in performing its work. The contractor brings a claim against the architect for negligent misrepresentation. Is the contractor required to file a certificate of merit? If so, the contractor faces a significant hurdle to pursuing its claim, because the contractor likely has no access to the architect's contract with the owner, or to any other communications or important information concerning the development of the project design. Without such information, a contractor often has difficulty in obtaining a certificate of merit.

In at least two cases, courts have held that no certificate of merit is necessary when a contractor sues an architect for damages caused by its reliance on the architect's inaccurate drawings or specifications (i.e. a negligent misrepresentation claim). *Frey Lutz Corp. v. Agoos/Lovera Architects*, No. CI-05-05661, CCP Lancaster County, May 2006 (PICS No. 06-0687(7)); *Quinn Construction, Inc. v. Skanska USA Building Inc.*, 2008 U.S. Dist. LEXIS 45980 (E.D. Pa. June 10, 2008). In these cases, the courts recognized that

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a certificate of merit is only required where the complaint contains allegations of professional negligence (i.e., a deviation from a professional standard), rather than ordinary negligence. The courts recognized that negligent misrepresentation claims generally do not focus on whether the substance of the information provided by the architect fell below the applicable professional standard of care, but on whether the architect (1) misrepresented a material fact, (2) made such a misrepresentation under circumstances in which it ought to have known its falsity, (3) intended to induce another to act on the misrepresentation and (4) subjected to injury a party acting in justifiable reliance on the misrepresentation. Thus, the courts recognized that, to establish a negligent misrepresentation claim, a contractor generally does not need to introduce evidence of the professional standard of care of architects, because negligent misrepresentation claims proceed under a theory of ordinary negligence. As such, the courts held that no certificate of merit was required to support such claims. A contractor's reliance on these non-binding cases was somewhat risky because, if the court held that a certificate of merit was, in fact, necessary, its claim could be dismissed.

Recent amendments to Pennsylvania's certificate of merit rules removed this risk. On June 16, 2008, the Pennsylvania Supreme Court amended the Pennsylvania Rules of Civil Procedure governing professional liability actions. In particular, the amendments have substantially reduced the scope of the certificate merit rules. Rule 1042.1(a) now reads: "The rules of this chapter govern a civil action in which a professional liability claim is asserted *by or on behalf of a patient or client* of the licensed professional . ." (The original version of the rules applied to "a civil action in which a professional liability claim is asserted against a licensed professional.")

In light of these changes, a certificate of merit is no longer required to assert a claim for professional negligence unless a contractual relationship exists between the parties. Thus, under the new certificate of merit rules, which are effective immediately, a certificate of merit is not required to support a third-party claim against a design professional. The rule changes thus make it easier for a contractor to file a negligent misrepresentation claim against an architect.

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